Office-Supreme Court, U.S.
FILED
JUL 20 1982
ALEXANDER L. STEVAS,
CLERK

NO 82-125

SUPREME COURT OF THE UNITED STATES

FALL TERM, 1982

LEE CHANCELLOR and JEAN CHANCELLOR, Individuals,

Petitioners,

vs.

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF ORANGE, and MARY JAY BAKER, an Individual/Real Party in Interest,

Respondents,

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF ORANGE

PETITION

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QUESTION PRESENTED

The important question of law which has been decided by the Respondent Superior Court Of California For The County Of Orange, and which has not been but should be settled by this Honorable Court, is as follows:

"Is it a denial of equal protection of the lasw under the Fourteenth Amendment to the United States Constitution to prevent the Petitioners, who are heirs whose decedent died without any surviving claim for punitive damages, from seeking punitive damages in their wrongful death action pursuant to relevant California statutes?"

TABLE OF CONTENTS

		Page
I.	JURISDICTION	1
II.	CONSTITUTIONAL PROVISION INVOLVED	2
III.	STATEMENT OF THE CASE	2
IV.	REASONS FOR GRANTING THE WRIT	8
V.	CONCLUSION	10
VI.	APPENDIX	11

TABLE OF AUTHORITIES

CASES **Page**

Field Research Corp. v. Superior Court
(1969) 71 C.2d 110 9

Bleger v. Superior Court
(1981) 125 C.A.3d 959 9

Grimshaw v. Ford Motor Co.
(1981) 119 C.A.3d 757 ..... 6, 7

STATUTES

28 U.S.C. Section 1257(3) 1

California Civil Code, Section 3294..... 4, 8

California Code of Civil Procedure, Section 377
... 3, 8, 10

California Code of Civil Procedure,
Section 437c 9

California Probate Code, Section 573..... 6, 7

MISCELLANEOUS

United States Constitution,
Fourteenth Amendment, Section 1
(Due Process Clause) 2

PETITION ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF ORANGE

Petitioners pray that a writ of certiorari issue to review the partial summary judgment order of the Respondent Superior Court Of California For the County Of Orange. That partial summary judgment order in essence held that under relevant California statutory and case law the Petitioners are not entitled to seek recovery for punitive damages in their wrongful death action.

JURISDICTION

The subject partial summary judgment order was made on February 10, 1983. On March 11, 1982, the Court Of Appeal For The State Of California, Fourth Appellate District, Division Two denied **without opinion** Petitioner's Mandamus Petition to compel the Respondent Superior Court to vacate that partial summary judgment order. On April 21, 1982, the California Supreme Court denied **without opinion** Petitioner's Petition For Hearing to obtain relief from that same partial summary judgment order.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision involved is the relevant provision of the Fourteenth Amendment (Equal Protection Clause) to the United States Constitution, as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which . . . shall . . . deny to any person within its jurisdiction the equal protection of the laws." (U.S.C. Const. Amend. 14, Section 1).

STATEMENT OF THE CASE

The Petitioners are the natural father and mother, respectively, and the sole surviving heirs at law of Carl Marcus ("Mark") Chancellor, deceased (hereinafter "DECEDENT"). To avoid the death penalty, the Respondent/Real Party In Interest, Mark Jay Baker (hereinafter "BAKER"), plead guilty to and is currently serving a life sentence (with possibility of parole) for first degree murder in connection with DECEDENT's death. Petitioners are prosecuting their civil action for wrongful death against BAKER, which action is now pending in the Respondent Superior Court, entitled **Lee Chancellor and Jean Chancellor, Individuals, Plaintiffs, vs. Mark Jay Baker, an Individual, and DOES 1 through**

10 inclusive, Defendants, Orange County Superior Court Case No. 31 51 00. That action was commenced pursuant to **California Code of Civil Procedure,** Section 377, in which relevant part reads as follows:

> "When the death of a person is caused by the wrongful act or neglect of another, his or her heirs or personal representatives on their behalf may maintain an action for damages against the person causing the death . . . . In every action under this section, such damages may be given as under all the circumstances of the case may be just, but shall not include damages recoverable under Section 573 of the Probate Code. The respective rights of the heirs in any award shall be determined by the court. Any action brought by the personal representatives of the decedent pursuant to the provisions of Section 573 of the Probate Code may be joined with an action arising out of the same wrongful act or neglect brought pursuant to the provisions of this section. If an action be brought pursuant to the provisions of this section and a separate action arising out of the same wrongful act or neglect be brought pursuant to the provisions of Section 573 of the Probate Code, such actions shall be consolidated for trial on the motion of any interested party." (C.C.P., Section 377 (a)).

BAKER, has admitted to murdering DECEDENT

during the late evening hours on February 10, 1978 in connection with and in furtherance of BAKER robbing the DECEDENT. On January 11, 1979, Petitioners commenced their wrongful death action against BAKER by filing their Complaint in the Orange County Superior Court. In relevant part, Petitioner's Complaint alleges the outrageous nature of BAKER's conduct in murdering their son and requests recovery of punitive damages pursuant to **California Civil Code,** Section 3294, which in relevant part reads as follows:

> "In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant." (C.C., Section 3294(a)).

On or about April 21, 1980, BAKER filed his Answer to Petitioner's Complaint, which Answer purports to deny all of the material allegations of that Complaint.

On or about January 6, 1982, BAKER filed his Notice of Motion For Partial Summary Judgment, which in essence requested that the Respondent Superior Court refuse to permit Petitioners to proceed to Trial on the issue of punitive damages. BAKER argued that the Petitioners are not entitled to proceed to Trial on the issue of punitive damages **as a matter of law.**

On January 29, 1982, Petitioners filed their Memoran-

dum Of Points And Authorities In Opposition To Defendant's Motion For Partial Summary Judgment. Petitioners argued that under the circumstances of their particular case it would be a denial of constitutional equal protection of the laws for the Respondent Superior Court to refuse to permit them to proceed to Trial on the punitive damages issue.

On February 10, 1982, the Respondent Superior Court in fact "reluctantly" did grant BAKER's aforesaid Motion for partial summary judgment. However, during the course of those Motion proceedings, BAKER, through counsel, conceded the issue of DECEDENT's **instantaneous** death. Accordingly, as discussed with more particularity below, it is conceded that Petitioners constitute "heirs whose decedent died **without** any surviving claim for punitive damages".

On February 22, 1982, Petitioners filed their Mandamus Petition with the Court Of Appeal For The State Of California, Fourth Appellate District, Division Two, to compel the Respondent Superior Court to vacate that order granting partial summary judgment. Petitioners raised the same **equal protection** issue as the basis for that Petition. On March 11, 1982, the Court of Appeal entered its denial of Petitioners' Mandamus Petition, **without opinion.**

On March 22, 1982 Petitioners filed their Petition For Hearing with the California Supreme Court to obtain relief from that same partial summary judgment order. Again,

Petitioners raised the same **equal protection** issue as the basis for that Petition. On April 21, 1982, the California Supreme Court entered its denial of that Petition For Hearing, **without opinion.** Currently, Petitioners' action remains pending, awaiting trial setting.

Petitioners contend that the partial summary judgment order made by the Respondent Superior Court denies to them equal protection of the laws which right is guaranteed by the Fourteenth Amendment to the United States Constitution. To illustrate the unjustifiable nature of the anomalous statutory scheme complained of by the Petitioners, if the DECEDENT had been walking Petitioners' dog and BAKER had killed that dog rather than the DECEDENT, the Petitioners unquestionably would have had a right to proceed against BAKER on the issue of punitive damages. However, because BAKER killed Petitioners' **son** rather than their **dog** Petitioners are being prevented from seeking punitive damages.

If BAKER's attack on the DECEDENT had **not** resulted in instantaneous death, DECEDENT's personal representative(s) would have had a right to recover punitive damages against BAKER pursuant to **California Probate Code,** Section 573 (**Grimshaw v. Ford Motor Co.** (1981) 119 C.A.3d 757, at 829.) That Code Section in relevant part provides as follows:

> "Except as provided in this section no cause of action shall be lost by reason of death of any person but may be maintained by or against his executor or administrator.

> When a person having a cause of action dies before judgment, the damages recoverable by his executor or administrator are limited to such loss or damage as the decedent sustained or incurred prior to his death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had he lived, and shall not include damages for pain, suffering or disfigurement."

However, since it has been conceded by all the parties in the subject action that the DECEDENT's death was **instantaneous,** DECEDENT's personal representative(s) had no such **surviving** right to recover any punitive damages under **California Probate Code,** Section 573 (**Grimshaw v. Ford Motor Co., supra,** 119 C.A.3d at 833). Nevertheless, by its subject partial summary judgment order the Respondent Superior Court has made the additional conclusion that Petitioners also are not entitled to recover any punitive damages **as a matter of law** in their separate **wrongful death** action under **California Code of Civil Procedure,** Section 377.

In connection with the aforesaid anomaly, as the Court Of Appeal For The State Of California, Fourth Appellate District, Division Two commented in the **Grimshaw** case, **supra,** such "(a) statutory scheme which would punish a tortfeasor if he inflicts death-causing injury which does not result in simultaneous death but would not punish if death occurs instantaneously is difficult to explain on the

basis of any conceivable, realistic, rational legislative purpose (Citations omitted)" (119 C.A. 3d 834).

In the absence of any such "conceivable, realistic, rational legislative purpose", Petitioners are being arbitrarily singled out for disparate treatment from all other classes of tort victims. Moreover, the "double recovery/ windfall recovery" argument usually given as the rationale for denying the right to recover punitive damages in wrongful death cases (**Cf.:** 119 C.A.3d at 835) clearly is not applicable to the class of heirs to which the Petitioners belong. Indeed, by his own conduct in causing DECEDENT's **instantaneous** demise, BAKER thereby effectively insured against any such double/windfall recovery.

By their Petition, in essence the Petitioners are urging and requesting this Honorable Court to interpret California's wrongful death (**C.C.P.**, Section 377) and punitive damages (**C.C.** Section 3294) statutes to allow Petitioners to proceed to trial on the issue of punitive damages against BAKER, and to thereby interpret those statutes so as to uphold their constitutionality on the issue of equal protection of the laws.

REASONS FOR GRANTING THE WRIT

Petitioners are requesting this Honorable Court to exercise its jurisdiction at this time for plenary review of the equal protection issue raised by Petitioners in the interest of judicial efficacy, to avoid the wasted time, effort and

expense of pursuing Petitioners' action to judgment to obtain review on appeal. Since the subject partial summary judgment order is not immediately appealable (**California Code of Civil Procedure,** Section 437c; **Field Research Corp. v. Superior Court** (1969) 71 C.2d 110, at 111), pretrial review often has been allowed for such judicially-recognized exigent circumstances (Cf.; **Bleger v. Superior Court** (1981) 125 C.A.3d 959 - writ of mandate to compel reinstatement of punitive damages count erroneously striken).

In effect, if Petitioners are forced to proceed to trial in the absence of such expedited review, they thereby will be forced to try their action twice. In the event they are successful in pursuing that equal protection issue through the subsequent appellate process during the additional proceedings at the trial court level Petitioners necessarily would be required to again present to a new trier of fact all evidence tending to establish the egregiousness of BAKER's conduct and Petitioners' resulting damages - essentially the same evidence which Petitioners will be required to present in the absence of any claim for punitive damages in the initial trial.

Moreover, the legal issue presented to this Honorable Court at this time could not be more clearly presented for review on appeal the additional time, effort and expense of pursuing any such appeal process notwithstanding.

CONCLUSION

In light of the foregoing, it appears that there is no correspondence between the ostensible legislative goals (i.e., tc prevent "double/windfall" recoveries) and the subject classification of heirs to be excluded from punitive damages entitlement (i.e., heirs whose decedent died **without** a surviving claim for such damages). Since there is no chance for any such double/windfall recovery in this case, there is no conceivable, realistic, rational legislative purpose which justifies the disparate treatment between Petitioners and any other class of tort victims. Moreover, since the express language of the wrongful death statute (C.C.P., Section 377) does not specifically proscribe an award of punitive damages, Petitioners respectfully submit that this Honorable Court should resolve any reasonable doubt in favor of constitutionality by interpreting that statute to allow an award of punitive damages under the circumstances of this case.

Accordingly, Petitioners respectfully request and urge this Honorable Court to grant the relief prayed for in their Petition For Writ Of Certiorari on file herein, and for such other and further relief as may be proper, at this time in the interest of judicial efficacy, and substantial justice between the parties.

Respectfully submitted
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